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25 California Regional Water Quality Control Board, Santa Ana Region

26 UNITED STATES DISTRICT COURT  
27 CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

18 UNITED STATES OF AMERICA, and  
19 PEOPLE OF THE STATE OF CALIFORNIA,  
20 ex rel. CALIFORNIA REGIONAL WATER  
21 QUALITY CONTROL BOARD, SANTA ANA  
22 REGION,

23 Plaintiffs,

24 v.

25 ORANGE COUNTY SANITATION DISTRICT  
26 Defendant.

NO. XX XXX XX

CONSENT DECREE

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1           **WHEREAS**, in 1998, EPA and the Regional Board jointly issued to  
2       OCSD a modified NPDES permit that provided a waiver from the  
3       requirement to achieve secondary treatment requirements with respect to its  
4       discharge pursuant to Section 301(h) of the Act, 33 U.S.C. § 1311(h); and

5           **WHEREAS**, the Board of Directors of OCSD, by resolution No.  
6       OCSD 02-14, dated July 17, 2002, adopted a policy to treat its wastewater  
7       discharges to meet secondary treatment requirements, and, in December  
8       2002, applied to EPA and the Regional Board for a revised NPDES permit  
9       consistent with that policy; and

10          **WHEREAS**, the Parties expect that EPA and the Regional Board  
11       will have issued, before the date of entry of this Consent Decree, a revised  
12       NPDES permit requiring OCSD to achieve secondary treatment  
13       requirements for its discharges; and

14          **WHEREAS**, OCSD intends to undertake the activities identified in  
15       Exhibit A of this Consent Decree in order to improve some existing  
16       facilities and construct new facilities to achieve secondary treatment  
17       requirements; and

18          **WHEREAS**, as part of the District's overall Capital Improvement  
19       Program adopted by the Board of Directors, which includes construction of  
20       expanded secondary treatment facilities and rehabilitation of existing  
21       wastewater treatment facilities, and reclamation of wastewater, the District  
22       is jointly undertaking, with the Orange County Water District, the design;  
23       construction and operation of a wastewater reclamation project known as  
24       the Groundwater Replenishment System ("GWRS"); and

25          **WHEREAS**, OCSD contends that the GWRS will provide a reliable  
26       source of water for Orange County, that GWRS is neither a remedial project  
27

1 for OCSD wastewater treatment facilities, nor an expansion of secondary  
2 treatment facilities, and that it is not critical to the District achieving  
3 effluent limits to meet secondary treatment requirements; and

4 **WHEREAS**, portions of the GWRS facilities are being constructed  
5 on the site of OCSD's Reclamation Plant No. 1 concurrently with  
6 rehabilitation of existing and construction of new facilities at Plant No. 1;  
7 and

8 **WHEREAS**, for the above reasons, the GWRS project shall not be  
9 the subject of enforcement under the terms of this Consent Decree; and

10 **WHEREAS**, pursuant to this Consent Decree, OCSD will achieve  
11 effluent limits that meet secondary treatment requirements, in accordance  
12 with the explicit provisions of the Act, 33 U.S.C. § 1311(b)(1)(B),  
13 40 C.F.R. § 133.102 and the California Water Code Section 13286.9; and

14 **WHEREAS**, Plaintiffs do not warrant or aver in any manner that  
15 OCSD's complete compliance with this Consent Decree will result in  
16 compliance with its Permit, the Act, or the Water Code; and

17 **WHEREAS**, this settlement is made in good faith, after arms-length  
18 negotiations, and this Consent Decree is in the public interest.

19 **NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED,**  
20 **AND DECREED:**

21 **II. JURISDICTION AND VENUE**

22 A. The United States' complaint states a claim upon which relief  
23 may be granted against OCSD pursuant to Section 309(b) of the Act,  
24 33 U.S.C. § 1319(b); and 28 U.S.C. §§ 1345 and 1355. The Regional  
25 Board's complaint states a claim upon which relief may be granted against  
26 the OCSD pursuant to Water Code Sections 13376, 13377, 13385, and  
27

1 13386 and 28 U.S.C. § 1367. The Parties agree not to contest the  
2 jurisdiction of the Court to enter and enforce this Consent Decree.

3 B. Venue is proper in the United States District Court for the  
4 Central District of California pursuant to Section 309(b) of the Act,  
5 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1392(b) and 1395(a) and Water  
6 Code Section 13361 .

7 **III. BINDING EFFECT**

8 A. This Consent Decree shall apply to and be binding upon the  
9 United States and the Regional Board, and upon OCSD and any successor  
10 or other entities or persons otherwise bound by law. Any transfer of  
11 ownership or operation by OCSD of its System, or any element thereof, to  
12 any other person must be conditioned upon the transferee's agreement to  
13 undertake the obligations required by this Consent Decree, as provided in a  
14 written agreement between OCSD and the proposed transferee, enforceable  
15 by the United States and the Regional Board as third party beneficiaries of  
16 such agreement. No later than thirty (30) calendar days prior to transfer of  
17 ownership, operation, or other interest in any part or element of the System  
18 owned or operated by OCSD, OCSD shall give written notice of this  
19 Consent Decree to any successors in interest. Upon transfer of ownership,  
20 operation, or other interest in the System, OCSD shall provide a copy of this  
21 Consent Decree to any successor in interest. OCSD shall notify in writing  
22 the United States, EPA, and the Regional Board of any successor in interest  
23 at least thirty (30) calendar days prior to transfer. No transfer of ownership  
24 or operation of the System, whether in compliance with this Paragraph or  
25 otherwise, shall relieve OCSD of its obligation to ensure that the terms of  
26 the Consent Decree are implemented.

1 B. OCSD shall provide a copy of this Consent Decree or make the  
2 Consent Decree available to each engineering firm, consulting firm, and  
3 contractor retained to perform any activities required by this Consent  
4 Decree, and shall provide a copy to each engineering firm, consulting firm,  
5 and contractor already retained for such purpose, no later than thirty (30)  
6 days after the date of lodging of this Consent Decree.

7 C. In any action to enforce this Consent Decree, OCSD shall not  
8 raise as a defense the failure by any of its officers, directors, employees,  
9 agents, or contractors to take any actions necessary to comply with the  
10 provisions of this Consent Decree.

#### 11 **IV. OBJECTIVES**

12 The Parties' purpose in entering this Consent Decree is to further  
13 the objectives of the Act, including, but not limited to, Sections 101, 301,  
14 and 307 of the Act, 33 U.S.C. §§ 1251, 1311, and 1317, and to further the  
15 objectives of the Water Code. It is the express purpose of the Parties that  
16 OCSD come into and remain in full compliance with the Act and the Water  
17 Code; NPDES Permit No. CA0110604, renewals or amendments to the  
18 Permit; and federal laws and regulations governing discharges from the  
19 System.

#### 20 **V. DEFINITIONS**

21 A. Unless otherwise defined herein, terms used in this Consent  
22 Decree shall have the meanings given to those terms in the Act, the  
23 regulations promulgated thereunder (see, e.g., 40 C.F.R. § 133.102 and  
24 § 401.11), in the Water Code, and in the Permit.

25 B. The "Date of Lodging" shall mean the date the Consent Decree  
26 is filed for lodging with the Clerk of the Court for the United States District  
27



1 Court for the Central District of California.

2 C. The "Date of Entry" shall mean the date the Consent Decree is  
3 approved by the Court.

4 D. The "Parties" shall mean the Plaintiffs and the Defendant.

5 **VI. REMEDIAL ACTIONS**

6 A. OCSD shall undertake a program to attain and thereafter  
7 maintain compliance with its Permit, the Act, federal and state secondary  
8 treatment requirements, and the Water Code. OCSD's program must  
9 include the installation and operation of equipment at the Plants capable of  
10 achieving the secondary treatment requirements of 40 C.F.R. § 133.102.

11 The program must adequately address projected future wastewater flows.

12 B. OCSD shall complete the planning, design, construction, and  
13 operation of the facilities necessary to attain compliance with the secondary  
14 treatment requirements in accordance with the following schedule:

15

	<u>Task</u>	<u>Due Date</u>
16		
17	1. Complete construction of trickling	March 15, 2006
18	filters at Plant 1 (See project P1-76	
19	as described in Exhibit A)	
20		
21	2. Advertise for construction bids for	Nov. 15, 2006
22	Plant 1 secondary treatment	
23	facilities (See project P1-102 as	
24	described in Exhibit A)	
25		
26		
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1  
2 3. Advertise for construction bids for Jan. 15, 2007  
3 Plant 2 secondary treatment  
4 facilities (See project P2-90 as  
5 described in Exhibit A )  
6

7 4. Complete construction of Plant 2 Jan. 15, 2009  
8 existing secondary treatment  
9 rehabilitation (See project P2-74  
10 as described in Exhibit A)  
11

12 5. Complete construction of Plant 2 Feb. 15, 2011  
13 secondary treatment expansion  
14 (See project P2-90 as described  
15 in Exhibit A )  
16

17 6. Complete construction of Plant 1 Nov. 15, 2012  
18 secondary treatment expansion  
19 (See project P1-102 as described  
20 in Exhibit A)  
21

22 7. Achieve full compliance with the Dec. 31, 2012  
23 secondary treatment requirements  
24 of 40 C.F.R. § 133.102  
25

26 C. If any regulatory agency with jurisdiction over OCSD facilities  
27

1 or operations fails to issue, renew or modify a permit required for any part  
2 of the work required of OCSD under this Consent Decree, or delays the  
3 issuance, renewal or modification of a permit required for any part of the  
4 work required of OCSD under this Consent Decree, OCSD is not precluded  
5 from invoking the Dispute Resolution procedures set forth in Section XII  
6 (Dispute Resolution) to extend the affected schedules contained in Section  
7 VI (Remedial Actions) of this Consent Decree.

8 **VII. EFFLUENT LIMITS AND MONITORING REQUIREMENTS**

9 A. Interim Effluent Limits

10 From the date of entry of this Consent Decree to February 15, 2011,  
11 OCSD shall comply with the following Interim Effluent Limits for BOD 5  
12 20°C and Total Suspended Solids:

<u>Compound</u>	<u>30-day Average Limit</u>
BOD 5 20 °C	100 mg/l (Concentration) 2,750 metric tons/month (Loading)
Total Suspended Solids	55 mg/l (Concentration) 1,420 metric tons/per month (Loading)

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19 From February 16, 2011, to December 31, 2012, OCSD shall  
20 comply with the following Interim Effluent Quality Limits for BOD 5 20°C  
21 and Total Suspended Solids:  
22

<u>Compound</u>	<u>30-day Average Limit</u>
BOD 5 20°C	70 mg/l (Concentration)
	1,500 metric tons/year month (Loading)
Total Suspended Solids	45 mg/l (Concentration)
	1,000 metric tons/per month (Loading)

#### B. Effluent Limits and Monitoring Requirements

From the date of entry of this Consent Decree until December 31, 2012, OCSD shall comply with all Effluent Limitations, monitoring and reporting requirements, and all other terms and conditions of its Permit, except for the Permit's final Effluent Limitations for BOD 5 20°C and Total Suspended Solids. Upon and after December 31, 2012, OCSD shall comply with all Effluent Limitations, monitoring and reporting requirements, and all other terms and conditions of its Permit, without exception.

### VIII. FUNDING

OCSD's performance of the requirements of this Consent Decree is not conditioned upon the receipt of any federal or state grant or loan funds. OCSD's nonperformance of any obligation under this Consent Decree is not excused by the failure to obtain or shortfall of any federal or state grant or loan funds, or by the processing of any applications for the same.

### IX. REPORTING

A. Following the entry of this Consent Decree, and each March 1st and September 1st thereafter, until expiration, as provided in Section IX

1 (Reporting) Paragraph E, OCSD shall submit to EPA, the Regional Board  
2 and the general public (via OCSD's website), a written report describing:  
3 the status of projects required under Section VI (Remedial Actions) of this  
4 Consent Decree; the status of OCSD's compliance and any reasons for  
5 noncompliance with the requirements of Section VI (Remedial Actions) of  
6 this Consent Decree; and the work to be performed pursuant to Section VI  
7 (Remedial Actions) of this Consent Decree, during the following twelve  
8 (12) month period. Notification pursuant to this Section of any anticipated  
9 delay shall not, by itself, excuse the delay. The full report shall be made  
10 available for inspection by any person at EPA's offices, the offices of the  
11 Regional Board and the office of OCSD.

12 B. Within forty-five (45) calendar days after the submission of  
13 each of the March reports required by Section IX (Reporting) Paragraph A,  
14 the Parties will meet at a time and location to be set by OCSD to review the  
15 reports.

16 C. Within fourteen (14) calendar days following the deadline date  
17 of any requirement in Section VI (Remedial Actions) of this Consent  
18 Decree, OCSD shall notify in writing, EPA and the Regional Board of  
19 OCSD's compliance with said requirement, unless such compliance has  
20 already been reported in a report required by Section IX (Reporting)  
21 Paragraph A. Notice of noncompliance shall be governed by Section IX  
22 (Reporting) Paragraph A.

23 D. All reports submitted pursuant to this Consent Decree must be  
24 signed by a principal executive officer or duly authorized representative of  
25 OCSD, as specified by 40 C.F.R. § 122.22(b)(2), and shall include the  
26 following statement:  
27

1 I certify under penalty of law that this document and  
2 all Exhibits were prepared under my direction or  
3 supervision in accordance with a system designed to  
4 assure that qualified personnel properly gather and  
5 evaluate the information submitted. Based on my  
6 inquiry of the person or persons who manage the  
7 system, or those persons directly responsible for  
8 gathering the information, I certify that the  
9 information submitted is, to the best of my knowledge  
10 and belief, true, accurate, and complete. I am aware  
11 that there are significant penalties for submitting false  
12 information, including the possibility of fine and  
13 imprisonment for the knowing submission of  
14 materially false information.  
15

16 E. The requirements of Sections IX (Reporting) Paragraphs A and  
17 B above, shall automatically expire six (6) months after OCSD certifies  
18 final compliance with all provisions subject to stipulated penalties in  
19 Section X (Stipulated Penalties) of this Consent Decree, absent notice of  
20 objection by Plaintiffs, provided to OCSD in writing, within forty-five (45)  
21 days of receipt of the certification. In such event, the Parties will meet and  
22 confer at a time and location to be set by OCSD in an effort to resolve the  
23 objection(s).  
24

25 **X. STIPULATED PENALTIES**

26 A. OCSD shall pay the following stipulated penalties for  
27 noncompliance with any Interim Effluent Limitation contained in Section  
28 VII (Effluent Limits and Monitoring Requirements) Paragraph A of this  
29 Consent Decree:  
30

<u>Violation of Each Parameter</u> <u>(e.g., BOD, TSS)</u>	<u>Penalty</u>
30-Day Average Concentration Limit	\$20,000/month
30-Day Average Loading Limit	\$20,000/month

B. OCSD shall pay the following stipulated penalties for noncompliance with any requirement of Section VI (Remedial Actions) and any requirements of Section IX (Reporting) of this Consent Decree (except for requirement No. 4 in Section VI (Remedial Actions) to complete construction of the rehabilitation of the existing Plant 2 secondary rehabilitation (P2-74) for which no stipulated penalties will be assessed):

<u>Period of Failure to Comply</u>	<u>Penalty</u>
1st to 30th day	\$1,000/day per violation
31st to 60th day	\$2,500/day per violation
After 60 days	\$5,000/day per violation

C. Notwithstanding Section X (Stipulated Penalties) Paragraphs A and B above, if OCSD fails to attain full compliance with the secondary treatment requirements of its Permit and the Act by December 31, 2012, OCSD shall pay a stipulated penalty in accordance with the following schedule:

<u>Period of Failure to Comply</u>	<u>Penalty</u>
1 - 30 days	\$2,000/day
31 - 60 days	\$5,000/day
After 60 days	\$10,000/day

Any penalty assessed pursuant to Section X (Stipulated Penalties) Paragraph C above, shall be in addition to any other penalty that may be incurred under Section X (Stipulated Penalties) Paragraphs A and B above.

1           D. The stipulated penalties herein shall be in addition to other  
2 remedies or sanctions available to the United States or the Regional Board  
3 by reason of OCSD's failure to comply with the requirements of this  
4 Consent Decree, its Permit, the Act, or the Water Code.

5           E. OCSD shall pay any stipulated penalties by the fifteenth (15th)  
6 day of the month following receipt of a letter from EPA or the Regional  
7 Board demanding payment. OCSD shall pay fifty percent (50%) of any  
8 stipulated penalties by Electronic Funds Transfer ("EFT") to the U.S.  
9 Treasury according to current United States' EFT procedures, and fifty  
10 percent (50%) of any stipulated penalties by check to the State Water  
11 Pollution Cleanup and Abatement Account (Water Code Section 13385(n)).  
12 Up to fifty percent (50%) of stipulated penalties scheduled for payment to  
13 the State Water Pollution Cleanup and Abatement Account may be diverted,  
14 upon agreement by the Regional Board, to an approved Supplemental  
15 Environmental Project. Concurrently with the EFT, OCSD shall fax notice  
16 of payment to the person designated as "Point of Contact" on the EFT  
17 transfer instructions and to the person designated as the contact on the State  
18 Water Pollution Cleanup and Abatement Account, and shall send notice of  
19 payment to EPA, the United States Department of Justice, and the Regional  
20 Board, at the addresses listed in Section XIX (Form of Notice) of this  
21 Consent Decree. The notice of payment shall identify: (1) the date and  
22 amount of money transferred; (2) the name and address of the transferring  
23 bank; (3) this case by caption and judicial docket number; (4) USAO File  
24 Number (to be provided); (5) DOJ #90-5-1-1-07914; (6) this Consent  
25 Decree (including date of entry); and (7) a description of the reason for the  
26 payment (including Section numbers of this Consent Decree that are most  
27



1 relevant to the payment).

2 **XI. FORCE MAJEURE**

3 A. A "force majeure event" is any event beyond the control of  
4 OCSD, its contractors, or any entity controlled by OCSD that delays the  
5 performance of any obligation under this Consent Decree despite OCSD's  
6 best efforts to fulfill the obligation.

7 "Best efforts" includes anticipating any potential force majeure  
8 event and addressing the effects of any such event: (a) as it is occurring and  
9 (b) after it has occurred, to prevent or minimize any resulting delay to the  
10 greatest extent possible.

11 If any event occurs that OCSD believes is a force majeure event,  
12 OCSD shall immediately notify EPA and the Regional Board by telephone,  
13 and shall notify in writing the Court, the United States, EPA, and the  
14 Regional Board within fifteen (15) calendar days of the date on which  
15 OCSD first knew or should have known, by exercise of due diligence, of the  
16 event. The notice shall specifically reference this Section of the Consent  
17 Decree and describe in detail the anticipated length of time the violation  
18 may persist, the precise cause or causes of the violation, the measures taken  
19 or to be taken by OCSD to prevent or minimize the violation as well as to  
20 prevent future violations, and the timetable by which those measures will be  
21 implemented. Failure by OCSD to comply with the notice requirements of  
22 this Paragraph shall constitute a waiver of OCSD's right to obtain an  
23 extension of time for its obligations under Section XI (Force Majeure)  
24 Paragraph B based on such incident.

25 B. If EPA and the Regional Board agree that a violation has been  
26 caused by a force majeure event, the time for performance of an affected  
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1. requirement shall be extended for a period not to exceed the actual delay in  
2. performance resulting from such circumstance. In addition, stipulated  
3. penalties shall not be due for said delay. EPA and the Executive Officer or  
4. the Executive Officer's designee of the Regional Board shall notify OCSD  
5. of the agreement or disagreement with OCSD's claim of a delay or  
6. impediment to performance within forty-five (45) calendar days of receipt  
7. of OCSD's notice under Section XI (Force Majeure) Paragraph A. If EPA  
8. or the Regional Board does not so agree, or does not notify OCSD of its  
9. decision within forty-five (45) calendar days, OCSD may submit the matter  
10. to the Court for resolution pursuant to Section XII (Dispute Resolution) of  
11. this Consent Decree. In any such dispute, OCSD bears the burden of  
12. proving, by a preponderance of the evidence, that each claimed force  
13. majeure event is a force majeure event; that OCSD gave the notice required  
14. by this Section; that the force majeure event caused any delay OCSD claims  
15. was attributable to that event; and that OCSD exercised best efforts to  
16. prevent or minimize any delay caused by the event.

17. C. Unanticipated or increased costs or expenses associated with  
18. the implementation of this Consent Decree, changed financial  
19. circumstances, or technical infeasibility of meeting effluent limitations shall  
20. not, in any event, serve as a basis for changes in this Consent Decree or  
21. extensions of time under this Consent Decree.

22. D. An extension of one compliance date based on a particular  
23. incident shall not necessarily result in an extension of a subsequent  
24. compliance date or dates. OCSD must make an individual showing of proof  
25. regarding each delayed incremental step or other requirement for which an  
26. extension is sought.

1 E. Where the United States and the Regional Board agree to an  
2 extension of time, the appropriate modification shall be made pursuant to  
3 Section XXI (Modification) of this Consent Decree.

4 **XII. DISPUTE RESOLUTION**

5 A. Any dispute that arises under or with respect to this Consent  
6 Decree shall in the first instance be the subject of informal negotiations  
7 between the Parties to the dispute. The period for informal negotiations  
8 shall not exceed thirty (30) calendar days from the time the dispute arises,  
9 unless it is modified by a written agreement of the Parties to the dispute.  
10 The dispute shall be considered to have arisen when one party sends the  
11 other Parties a written Notice of Dispute.

12 B. In the event that the Parties cannot resolve a dispute by  
13 informal negotiations under the preceding Paragraph, the position advanced  
14 by the Plaintiffs shall be considered binding unless, within twenty (20)  
15 calendar days after the conclusion of the informal negotiation period, OCSD  
16 invokes the formal dispute resolution procedures of this Section by serving  
17 on the United States and the Regional Board a written Statement of Position  
18 on the matter in dispute, including, but not limited to, any factual data,  
19 analysis or opinion supporting that position, and any supporting  
20 documentation relied upon by OCSD. OCSD shall set out the nature of the  
21 dispute with a proposal for its resolution. The Statement of Position shall  
22 specify OCSD's position as to whether the formal dispute resolution should  
23 proceed.

24 C. Within thirty (30) calendar days after receipt of OCSD's  
25 Statement of Position, the Plaintiffs will serve on OCSD their Statement of  
26 Position, including, but not limited to, any factual data, analysis, or opinion  
27

1 supporting that position and all supporting documentation relied upon by  
2 the Plaintiffs. Plaintiffs' Statement of Position shall include a statement as  
3 to whether the formal dispute resolution should proceed.

4 D. Formal dispute resolutions are accorded review on the  
5 administrative record under applicable principles of administrative law. An  
6 administrative record of the dispute shall be maintained by EPA and shall  
7 contain all statements of position, including supporting documentation,  
8 submitted pursuant to this Section. Where appropriate, the Director of the  
9 Water Division of EPA Region 9, may allow submission of supplemental  
10 statements of position by the Parties to the dispute.

11 E. The Director of the Water Division of EPA Region 9, will issue  
12 a final administrative decision resolving the dispute based on the  
13 administrative record and this decision shall be binding upon OCSD, subject  
14 only to the right to seek judicial review as described in this Section.

15 F. Any administrative decision made by EPA pursuant to this  
16 Consent Decree shall be reviewable by this Court, provided that a motion  
17 for judicial review of the decision is filed by OCSD with the Court, and  
18 served on all Parties within thirty (30) calendar days of receipt of EPA's  
19 decision. The motion shall include a description of the matter in dispute,  
20 the efforts made by the Parties to resolve it, the relief requested, and the  
21 schedule, if any, within which the dispute must be resolved to ensure  
22 orderly implementation of this Consent Decree. The United States and the  
23 Regional Board may file a response to OCSD's motion.

24 G. In proceedings on any dispute governed by this Section, this  
25 court shall determine what standard of review to apply, as provided by  
26 applicable law.

1 H. The invocation of dispute resolution procedures under this  
2 Section shall not, by itself, extend, postpone, or affect in any way any  
3 obligation of Defendant under this Consent Decree, unless and until final  
4 resolution of the dispute so provides and the Court grants such an order.

5 I. Stipulated penalties with respect to the disputed matter shall  
6 continue to accrue but payment shall be stayed pending resolution of the  
7 dispute. Notwithstanding the stay of payment, stipulated penalties shall  
8 accrue from the first day of noncompliance with any applicable provision of  
9 this Consent Decree.

10 **XIII. RIGHT OF ENTRY**

11 A. EPA, the Regional Board, or their representatives, contractors,  
12 and consultants, and attorneys for the United States, may enter any facility  
13 covered by this Consent Decree, at all times, upon proper presentation of  
14 credentials to the manager or managers of the facility or, in the manager's  
15 absence, to the highest ranking employee present on the premises, for the  
16 purposes of:

- 17 1. monitoring the progress of activities required by this  
18 Consent Decree;
- 19 2. verifying any data or information submitted to EPA or  
20 the Regional Board in accordance with the terms of the Consent Decree;
- 21 3. obtaining samples, and, upon request, splits of any  
22 samples taken by OCSD or its consultants or contractors;
- 23 4. assessing OCSD's compliance with this Consent Decree;
- 24 and
- 25 5. inspecting and reviewing any records required to be kept  
26 under the terms and conditions of this Consent Decree or any NPDES  
27

1 permit and the Act.

2 B. Termination of this Consent Decree shall not affect the rights  
3 of the United States, EPA, or the Regional Board to enter any such facility  
4 pursuant to the Act, the Permit or any other authority.

5 C. This Consent Decree in no way limits or affects any right of  
6 entry and inspection, or any right to obtain information, held by the United  
7 States or the Regional Board pursuant to applicable federal or state laws,  
8 regulations, or permits, nor does it limit or affect any duty or obligation of  
9 Defendant to maintain records or information imposed by applicable federal  
10 or state laws, regulations, or permits.

11 **XIV. NOT A PERMIT**

12 This Consent Decree is not and shall not be interpreted to be a  
13 permit, or a modification of an existing permit, issued pursuant to Section  
14 402 of the Act, 33 U.S.C. § 1342, nor shall it in any way relieve OCSD of  
15 its obligation to obtain a permit and comply with the requirements of a  
16 permit or with any other applicable federal or state law, or regulation. Any  
17 new permit, or modification of existing permits, must be complied with in  
18 accordance with applicable federal and state laws and regulations. The  
19 pendency or outcome of any proceeding concerning the issuance,  
20 reissuance, or modification of an NPDES permit shall neither affect nor  
21 postpone OCSD's duties and liabilities as set forth in this Consent Decree.

22 **XV. FAILURE OF COMPLIANCE**

23 The United States and the Regional Board do not, by consenting to  
24 the entry of this Consent Decree, warrant or aver in any manner that  
25 OCSD's complete compliance with this Consent Decree will result in  
26 compliance with its Permit, the Act or the Water Code. Notwithstanding  
27

1 EPA's or the Regional Board's review and/or approval of any plans  
2 formulated pursuant to this Consent Decree, OCSD shall remain solely  
3 responsible for compliance with the terms of the Act, the Water Code, this  
4 Consent Decree, and its Permit.

5 **XVI. NON WAIVER PROVISIONS**

6 A. This Consent Decree in no way affects or relieves OCSD of  
7 responsibility to comply with any federal, state, local law, regulation, or its  
8 Permit. Nothing contained in this Consent Decree shall be construed to  
9 prevent or limit the rights of the United States or the Regional Board to  
10 obtain penalties or injunctive relief under the Act, or other federal or state  
11 statutes, or regulations except as expressly specified herein.

12 B. The Parties agree that OCSD is responsible for achieving and  
13 maintaining complete compliance with all applicable federal and state laws,  
14 regulations, and permits, and that compliance with this Consent Decree shall  
15 be no defense to any actions commenced by the Plaintiffs pursuant to said  
16 laws, regulations, or permits.

17 C. This Consent Decree does not limit or affect the rights of  
18 OCSD, the United States, or the Regional Board as against any third Parties,  
19 nor does it limit the rights of third Parties against OCSD.

20 D. The United States and the Regional Board reserve all legal and  
21 equitable remedies available to enforce the provisions of this Consent  
22 Decree.

23 **XVII. COSTS OF SUIT**

24 OCSD shall bear its own costs and attorneys' fees in this action.  
25 Should OCSD subsequently be determined to have violated the terms or  
26 conditions of this Consent Decree, OCSD shall be liable to the United States  
27

1 and the Regional Board for any costs and attorneys' fees incurred by the  
2 United States or the Regional Board, respectively, in any actions against  
3 OCSD for noncompliance with this Consent Decree.

4 **XVIII. CONTINGENT LIABILITY OF STATE OF CALIFORNIA**

5 This Consent Decree does not resolve the contingent liability of the  
6 State under Section 309(e) of the Act, 33 U.S.C. § 1319(e). The United  
7 States specifically reserves its claims against the State, and the State  
8 reserves its defenses.

9 **XIX. FORM OF NOTICE**

10 A. Except as specified otherwise, when written notification to or  
11 communication with the United States, EPA, the Regional Board, or OCSD  
12 is required by this Consent Decree, it shall be addressed as follows:

13  
14 As to the United States:

15 Chief  
16 Environmental Enforcement Section  
17 U.S. Department of Justice  
18 7611 Ben Franklin Station  
19 Washington, D.C. 20004-7611

20 As to EPA:

21 Chief, Clean Water Compliance Office (WTR 7)  
22 U.S. Environmental Protection Agency, Region 9  
23 75 Hawthorne Street  
24 San Francisco, California 94105  
25  
26  
27



1                   As to the Regional Board:

2                   Marilyn H. Levin  
3                   Deputy Attorney General  
4                   Office of the Attorney General  
5                   300 S. Spring Street, Suite 500  
6                   Los Angeles, California 90013

7                   Jorge A. Leon, Senior Staff  
8                   Counsel  
9                   State Water Resources Control Board  
10                  1001 I Street, 22<sup>nd</sup> Floor.  
11                  P.O. Box 100  
12                  Sacramento, California 95812

13                  Gerard Thibeault  
14                  Executive Officer  
15                  Regional Water Quality Control Board, Santa Ana Region  
16                  3737 Main Street, Suite 500  
17                  Riverside, California 92501-3348

18                   As to OCSD:

19                  Blake P. Anderson  
20                  General Manager  
21                  Orange County Sanitation District  
22                  P.O. Box 8127  
23                  Fountain Valley, California 92728-8127

24                  Thomas L. Woodruff, Esq.  
25                  General Counsel – OCSD  
26                  Woodruff, Spradlin & Smart  
27                  701 S. Parker Street, Suite 8000  
                    Orange, California 92868

1           B. Notifications to or communications with the Parties shall be  
2 deemed submitted on the date they are postmarked and sent by certified  
3 mail, return receipt requested. Should any party wish to modify its  
4 designation of person to receive notice, it shall notify in writing each of the  
5 other Parties and the Clerk of the Court.

6       **XX.    PUBLIC COMMENT**

7           The Parties agree and acknowledge that final approval by the United  
8 States and Regional Board and entry of this Consent Decree is subject to the  
9 requirements of 28 C.F.R. § 50.7, that provides for notice of the lodging of  
10 this Consent Decree in the Federal Register, an opportunity for public  
11 comment, and consideration of any comments received. The United States  
12 and the Regional Board reserve the right to withdraw or withhold its  
13 consent if the comments received disclose information or considerations  
14 that indicate that the Consent Decree is inappropriate, improper, or  
15 inadequate. OCSD agrees not to withdraw from, oppose entry of, or to  
16 challenge any provision of this Consent Decree, unless the United States  
17 and the Regional Board notify OCSD in writing that it no longer supports  
18 entry of the Consent Decree.

19       **XXI.   MODIFICATION**

20           OCSD shall have the right to seek a modification from EPA and the  
21 Regional Board of any provision of this Consent Decree. Upon written  
22 request of OCSD, EPA, and the Regional Board agree to review, in good  
23 faith, a request of OCSD to modify this Consent Decree. Except as  
24 provided in Section VI (Remedial Actions) Paragraph C of this Consent  
25 Decree, EPA, and the Regional Board's decision to disapprove a  
26 modification of this Consent Decree is not subject to Dispute Resolution  
27

1 procedures set forth in Section XII (Dispute Resolution) above.

2 Notwithstanding that EPA and the Regional Board's decision to disapprove  
3 a modification of this Consent Decree is not subject to Dispute Resolution  
4 procedures, OCSD reserves its right to raise, and the United States and the  
5 Regional Board reserve their rights to contest, any claims for relief the  
6 parties may have pursuant to Rule 60 of the Federal Rules of Civil  
7 Procedure.

8 This Consent Decree shall not be amended or modified except by  
9 the written consent of the Parties or the Court. Any material modifications  
10 of this Consent Decree by the Parties shall be in writing and approved by  
11 the Court before being deemed effective. However, minor modifications that  
12 the Parties determine and agree do not significantly alter the remedial action  
13 to be conducted by OCSD can be made by the Parties, provided such  
14 changes are agreed upon in writing by EPA, the Regional Board, and  
15 OCSD.

16 **XXII. CONTINUING JURISDICTION OF THE COURT**

17 The Court shall retain jurisdiction to enforce the terms and  
18 conditions of this Consent Decree and to resolve disputes arising hereunder.

19 **XXIII. TERMINATION**

20 A. This Consent Decree may be terminated when OCSD has  
21 achieved compliance for twelve (12) consecutive months with the secondary  
22 treatment effluent quality requirements of 40 C.F.R. § 133.102, and has  
23 made all payments required by this Consent Decree. To terminate this  
24 Consent Decree, OCSD shall certify such completion and compliance to the  
25 United States and the Regional Board.

26 B. If the United States or the Regional Board dispute the OCSD  
27

1 certification, in writing and within forty-five (45) calendar days of receiving  
2 such certification of completion and compliance from OCSD, OCSD may  
3 proceed only under the dispute resolution provisions of this Consent  
4 Decree, and the Consent Decree shall remain in effect pending resolution of  
5 the dispute by the Parties or the Court. If the United States agrees that this  
6 Consent Decree may be terminated, this Consent Decree shall terminate  
7 upon notice to the Court by OCSD that the provisions of this Section have  
8 been complied with and that the Parties agree that the Consent Decree may  
9 be terminated.

#### 10 **XXIV. SIGNATORIES/SERVICE**

11 A. The Assistant Attorney General for the Environment and  
12 Natural Resources Division of the United States Department of Justice, on  
13 behalf of the United States, the representatives signing this document on  
14 behalf of the Regional Board, and the representatives of OCSD all certify  
15 that they are authorized to enter into the terms and conditions of this  
16 Consent Decree and to execute and bind legally the parties they represent.

17 B. OCSD shall identify on the attached signature page, the name  
18 and address of an agent who is authorized to accept service of process on  
19 behalf of OCSD with respect to all matters arising under or relating to this  
20 Consent Decree. OCSD hereby agrees to accept service in that manner and  
21 to waive the formal service requirements set forth in Rule 4 of the Federal  
22 Rules of Civil Procedure and any applicable local rules of this Court,  
23 including, but not limited to, service of summons.  
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1 IT IS HEREBY ORDERED:

2 Entered this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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8 UNITED STATES DISTRICT COURT JUDGE  
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27

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Orange County Sanitation District.

3  
4 FOR THE UNITED STATES OF AMERICA:  
5

6  
7  
8  
9  
10 \_\_\_\_\_  
11 THOMAS L. SANSONETTI, ESQ.  
12 Assistant Attorney General  
13 Environment and Natural Resources  
14 Division  
15 United States Department of Justice  
16 Washington, DC 20530  
17

10-26-04

Dated

18 \_\_\_\_\_  
19 BRADLEY O'BRIEN, ESQ.  
20 Environmental Enforcement Section  
21 Environment and Natural Resources  
22 Division  
23 United States Department of Justice  
24 301 Howard Street, Suite 1050  
25 San Francisco, California 94105  
26  
27

\_\_\_\_\_  
Dated

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Orange County Sanitation District.

3  
4 FOR THE ENVIRONMENTAL PROTECTION AGENCY:  
5

6  
7  
8  
9  
10 \_\_\_\_\_  
11 WAYNE NASTRI  
12 Regional Administrator  
13 U.S. Environmental Protection Agency,  
14 Region IX  
15 75 Hawthorne Street  
16 San Francisco, California 94105

\_\_\_\_\_  
Dated

17  
18 \_\_\_\_\_  
19 THOMAS V. SKINNER  
20 Acting Assistant Administrator  
21 for Enforcement & Compliance Assurance  
22 U.S. Environmental Protection Agency  
23 1200 Pennsylvania Avenue, NW  
24 Washington, DC 20460 0001

\_\_\_\_\_  
Dated

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Orange County Sanitation District.

3  
4 FOR THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel.  
5 CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD,  
6 SANTA ANA REGION:  
7  
8  
9  
10

11 \_\_\_\_\_  
12 GERARD THIBEAULT  
13 Executive Officer  
14 Regional Water Quality Control Board  
15 Santa Ana Region  
16 3737 Main Street, Suite 500  
17 Riverside, California 92501-3348  
18

\_\_\_\_\_  
Dated

19 \_\_\_\_\_  
20 MARILYN H. LEVIN  
21 Deputy Attorney General  
22 300 South Spring Street  
23 11<sup>th</sup> Floor, North Tower  
24 Los Angeles, California 90013  
25

\_\_\_\_\_  
Dated

26  
27 Attorneys for Plaintiff People of the  
State of California, ex rel. California  
Regional Water Quality Control Board,  
Los Angeles Region



1 THE UNDERSIGNED PARTY enters into this Consent Decree in the  
2 matter of United States v. Orange County Sanitation District.

3  
4 FOR THE ORANGE COUNTY SANITATION DISTRICT:  
5

6  
7  
8  
9 \_\_\_\_\_  
BLAKE P. ANDERSON

\_\_\_\_\_ Dated

10 General Manager

11 P.O. Box 8127

12 Fountain Valley, California 92728-8127  
13  
14

15 \_\_\_\_\_  
THOMAS L. WOODRUFF

\_\_\_\_\_ Dated

16 General Counsel - OCSD

17 Woodruff, Spradlin & Smart

18 701 South Parker Street, Suite 8000

19 Orange, California 92868-4760  
20

Agent Authorized to Accept Service on Behalf of Above signed

21 Party:  
22

23 Name (print):

Penny Kyle

24 Title:

Board Secretary - OCSD

25 Address:

P.O. Box 8127

Fountain Valley, California 92728

26 Phone Number:  
27